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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No. _____

JOHN D. BROWN,

Petitioner,

v.

CITY OF ATLANTA,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA

Oze' R. Horton
Attorney for Petitioner
7143 Oak Street
Jonesboro, Georgia 30236
(404) 478-0458

QUESTION PRESENTED

WHEN A MUNICIPALITY HAS A RIGHT TO DESTROY PETITIONER'S FOUR-UNIT APARTMENT HOUSE, OPERATING UNDER ITS OWN RULES DESIGNATED: IN REM PROCEEDINGS AGAINST DWELLINGS, BUILDINGS AND STRUCTURES UNFIT FOR HUMAN HABITATION OR OCCUPANCY; AND WHICH SET FORTH ITS SEVERAL RULES AND METHODS BY WHICH THE OWNER MUST BE GIVEN NOTICE BY SERVICE, PERSONAL OR OTHERWISE, AS SET FORTH IN SECTIONS 15-44 THROUGH 15-56 OF ITS HOUSING CODE, WHEN NO SERVICE WAS AFFECTED ON HIM OTHER THAN BY PUBLICATION, IS THERE A VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION, GUARANTEEING DUE PROCESS AND PAYMENT FOR PROPERTY TAKEN FOR PUBLIC PURPOSES?

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§15-22 OF THE ATLANTA HOUSING CODE, WHICH AUTHORIZES THE DETERMINATION BY THE CITY OFFICIALS OF THE UNFEASIBILITY OF REHABILITATION OF A DWELLING, AMOUNTS TO THE TAKING OF THE PRIVATE PROPERTY WITHOUT DUE PROCESS, AND WITHOUT JUST AND ADEQUATE COMPENSATION THEREFOR, AND IS DISCRIMINATORY IN THAT IT DENIES THE OWNER EQUAL PROTECTION OF THE LAWS IN VIOLATION OF THE CONSTITUTIONS OF THE STATE OF GEORGIA AND OF THE UNITED STATES.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA

JOHN D. BROWN, Petitioner, brings this his application to review by Writ of Certiorari the adverse judgment of the Court of Appeals of the State of Georgia, Case No. 65111, entered January 4, 1983; motion for reconsideration filed and denied; petition for Writ of Certiorari filed with the Supreme Court of Georgia and denied March 1, 1983; motion thereto for reconsideration filed and denied by the Supreme Court March 16, 1983.

CITATIONS TO OPINIONS BELOW

The Order of the Court of Appeals of the State of Georgia and the unreported opinion of the Superior Court of Fulton County are set out in Appendices A and B respectively. Petitioner's Application for a Writ of Certiorari in the Georgia Supreme Court (attached hereto as Appendix C) was denied on March 1, 1983; motion for reconsideration was denied by the Georgia Supreme Court on March 16, 1983 (attached hereto as Appendix D).

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3)[1], Petitioner having asserted below and asserts in this Court, deprivation of rights secured by the Constitution of the United States.

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1. 28 U.S.C. §1257(d) provides that final judgments or decrees rendered by the highest court of a State to which a decision could be had, may be reviewed by the Supreme Court: (3) By Writ of Certiorari -- where any title, right, privilege or immunity is especially set up or claimed under the Constitution, treaties or statutes of, or commission, held or authority exercised under, the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Fifth and Fourteenth Amendments to the United States Constitution.

2. This case also involves the following provisions of the Atlanta Housing Code:

§15-22

§15-55

QUESTION PRESENTED

When a municipality has a right to destroy Petitioner's four-unit apartment house, operating under its own rules designated: In Rem Proceedings Against Dwellings, Buildings and Structures Unfit for Human Habitation or Occupancy; and which set forth its several rules and methods by which the owner must be given notice by service, personal or otherwise, as set forth in Sections 15-44 through 15-56 of its housing code, when no service was affected on him other than by publication, is there a violation of the Fifth and Fourteenth Amendments of the

United States Constitution, guaranteeing due process and payment for property taken for public purposes?

HOW THE ISSUE WAS RAISED BELOW

Federal questions were raised by Petitioner Brown first in his petition before the Superior Court of Fulton County; then in his argument and brief before the Court of Appeals of the State of Georgia; then, especially before the Supreme Court of Georgia in his Petition for a Writ of Certiorari to the Court of Appeals. A copy of the Order of the Court of Appeals is made a part of this petition and is attached as Appendix A. A copy of the Order of the Superior Court of Fulton County is attached as Appendix B.

STATEMENT OF THE CASE

This case was brought by John D. Brown against the City of Atlanta when, without notice to him, the City destroyed his four-unit apartment house, under the Atlanta Housing Code which within itself provided for various and different types

of service, and without paying him for same, this under Sections of the Housing Code which City especially set forth in its arguments, briefs and defenses, §§15-44 through 15-56, without any legal service perfected on Brown.

In effect, the deputy sheriff intending to make service (or so it was said), practically camped in front of Brown's residence for three weeks attempting to make personal service, and without ever making inquiries as to whether or not John D. Brown did live at the residence, or by any other method. Finally, the City got the deputy sheriff to make an affidavit that Brown was non-resident, and served by publication. This was done after the City wrote a letter to Brown at the address to which the deputy sheriff attempted to make service. The letter was received by Brown and Brown answered, but never received any answer from the City other than a written notice that his apartment was destroyed, accompanied by a bill enclosed for costs.

Petitioner Brown brought his action based on State and Federal Constitutional provisions that his

property was taken without any payment therefor.

The Superior Court of Fulton County held that the City of Atlanta had done its best and was not therefore liable (See attached opinion, Appendix B). The Court of Appeals upheld the decision of the lower court. (See attached opinion, Appendix A). The Supreme Court of Georgia denied application for petition for writ of certiorari, and denied Petitioner's Motion for Reconsideration on March 16, 1983.

The City of Atlanta's acts in this were so flagrant that it is doubtful if it really intended to give the required notices, or make any offer at all as to any payment for the property.

In the face of all this, the Superior Court of Fulton County granted summary judgment to the City of Atlanta. The Court of Appeals of the State of Georgia set forth the City's lack of service, but said it had done its best, and affirmed the lower court.

The lower court denied summary judgment to Brown, on the same facts.

These same points were argued in both the Court of Appeals and the Supreme Court of Georgia without success. And Brown is left without any remedy except by this Petition for a Writ of Certiorari to issue.

Counsel for City, in his argument before the Superior Court of Fulton County on May 24, 1982, stated that he didn't know what else could be expected of the City as far as reasonable diligence in trying to serve the man.

REASON FOR GRANTING THE WRIT

§15-22 OF THE ATLANTA HOUSING CODE, WHICH AUTHORIZES THE DETERMINATION BY THE CITY OFFICIALS OF THE UNFEASIBILITY OF REHABILITATION OF A DWELLING, AMOUNTS TO THE TAKING OF THE PRIVATE PROPERTY WITHOUT DUE PROCESS, AND WITHOUT JUST AND ADEQUATE COMPENSATION THEREFOR, AND IS DISCRIMINATORY IN THAT IT DENIES THE OWNER EQUAL PROTECTION OF THE LAWS IN VIOLATION OF THE CONSTITUTIONS OF THE STATE OF GEORGIA AND OF THE UNITED STATES.

The Fourteenth Amendment to the United States Constitution provides that:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

The Fifth Amendment to the United States Constitution in part states, "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

A federal question was presented, it appearing that a claim of the plaintiffs in error that property of theirs was taken for a private purpose in violation of the due process of law provision of the federal constitution, was denied. Chicago, etc. R. Co. v. Chicago, Illinois, 166 U.S. 226; 17 S.Ct. 581; 41 L.Ed. 979 (1897); Henry W. O'Neill & Cornelius K. Leamer, 239 U.S. 244; 36 S.Ct. 54; 60 L.Ed 249.

The ordinance, §15-22 of the Atlanta Housing Code, which authorizes the determination by the City of Atlanta officials of the unfeasibility of rehabilitation of a dwelling amounts to the taking of the private property without due process, and without just and adequate compensation therefor, and is discriminatory in that it denies the owner equal protection of the laws in violation of the State and Federal Constitutions. Shaffer v. City of Atlanta, 233 Ga. 249 (1967).

Section 15-55 of the Atlanta Housing Code, 1968, provides that: "Nothing in this article shall be construed . . . as permitting any property

to be condemned or destroyed except in accordance with the police power of the State." (Ord. No. 1967-74 Sec. 1-112-1-67).

The only defense offered by the City was that it had done its best but failed. There is no law known to this party which permits any party this privilege, to offset service or due process. Petitioner Brown had no opportunity to make a defense.

CONCLUSION

HENCE, it is prayed that the Supreme Court of the United States will grant the Petition for Writ of Certiorari directed to the Court of Appeals of the State of Georgia, and reverse the judgment of that Court.

Respectfully submitted,

OZE' R. HORTON
Attorney for Petitioner
7143 Oak Street
Jonesboro, Georgia 30236
(404) 478-0458

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

JOHN D. BROWN,

Petitioner,

v.

CITY OF ATLANTA,

Respondent

APPENDIX TO

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
OF THE STATE OF GEORGIA

65111. BROWN v. CITY OF ATLANTA

QUILLIAN, Presiding Judge

This is an appeal from summary judgment for defendant-appellee City of Atlanta and denial of same to plaintiff-appellant Brown as to liability in an action seeking damages for the destruction without compensation of an apartment building owned by Brown after the City found the building unfit for human habitation or occupancy: Held:

1. The City acted under an ordinance which was an exercise of police power. Appellant asserts that summary judgment should not have been granted the city because the City did not give him proper notice of its action in accordance with the ordinance.

The City followed the notice requirements of the ordinance by first attempting to personally serve appellant with notice that his property had been found unfit for human habitation or occupancy and that a hearing would be held

on the findings. Numerous attempts were made to serve appellant at his residence address in Jonesboro. Although someone appeared to be at the residence, there were only two responses to the door. The first time a man, who said he was J.D. Brown, Sr., and who said that no one by the name of J.D. brown, Jr. (to whom the notice was addressed) resided at the address and that he had no knowledge of any property owned by a J.D. Brown, Jr. at the address of the premises in Atlanta. The second time a woman answered the door and said that no one named J.D. Brown, Jr. lived at the address. Thereafter, in accordance with the ordinance, a City officer made an affidavit that the whereabouts of appellant was unknown after the exercise of reasonable diligence and service of notice and hearing was made by publication in October 1976. A copy of the published notice was posted on the premises in question. On the date set for hearing, appellant did not appear, and following the procedures of the ordinance the City ordered the building demolished. In October 1977, before demolition took place, the City sent a routine letter to

appellant, at the same address at which personal service had been unsuccessful, informing him of the possibility of obtaining a grant to pay for the cost of demolishing the building. This prompted a letter response from appellant, using the same address and the name J.D. Brown, stating that the letter was the first notice h had of any action being taken against his building and threatening suit if the City demolished it without compensating him. Other than the letter no attempt was made by appellant to prevent the demolition of his building, which occurred in December 1977.

Our review of the procedures used by the city reveals that the requirements of the ordinance concerning notice to the appellant were complied with. Appellant's argument that his deposition testimony denying that he had received any notice precluded the grant of summary judgment is without merit as his deposition had not been filed before the hearing on the motion and thus could not be considered. Code Ann. §81A-156(c).

The trial court did not err in granting summary judgment to the City.

2. The remaining allegations of error are without merit.

Judgment affirmed. Shulman, C.J., and Carley, J., concur.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JOHN D. BROWN
Plaintiff

CIVIL ACTION
CASE NO. C-43221

vs.

CITY OF ATLANTA
Defendant

ORDER

The within and foregoing Motion for Partial Summary Judgment has been brought before this court by plaintiff JOHN D. BROWN. Defendant CITY OF ATLANTA has also moved for Summary Judgment.

After hearing the motions and examining argument of counsel and reviewing all appropriate materials the court finds the following facts to be without genuine issue.

1. The CITY OF ATLANTA determined that plaintiff's building at 747 Kirkwood Avenue, SE, was an unfit dwelling and unsafe building violating the Atlanta Housing Code.

2. The CITY initiated an In Rem proceeding against the property pursuant to Article III of the Housing Code.

3. The CITY attempted to notify plaintiff, the owner of the property, by personal service at 735 Patton Road in Jonesboro, Georgia.

4. Raymond Purcell, a Clayton County deputy sheriff, attempted the service by going to the residence one to three times a day, five days a week between May 13 and June 2, 1976. Although no one came to the door, there was often an automobile in the driveway.

5. Purcell similarly attempted to serve a second notice between June 11 and July 15, 1976. On one occasion, a man came to the door and stated he was J.D. Brown, Sr. He stated that J.D. BROWN, Jr. was not at home and was silent when asked where J.D. BROWN, Jr. could be found. He further said he knew nothing of any property on Kirkwood Avenue and then shut the door.

6. Purcell similarly attempted to serve a third notice between August 6 and August 17, 1976, but no one responded to his knocks.

7. The City then proceeded to publish notice of the hearing in the Fulton County Daily Report.

8. In early October, two CITY inspectors went to the Jonesboro address to personally inform plaintiff of the October 27 hearing. A woman told them that J.D. BROWN, Jr. did not reside at that address.

9. Plaintiff did not appear at the October 27 hearing and the City Housing Code Inspection Division ordered the demolition of the building.

10. By a letter dated October 18, 1977 and addressed to 735 Patton Drive in Jonesboro, the CITY informed plaintiff that he might qualify for a grant to demolish the building.

11. By a letter dated October 26, 1977 and with 735 Patton Road as the return address, plaintiff stated that the CITY's letter provided him with the first knowledge of the demolition proceedings and generally vented his feelings about the CITY's actions.

12. On December 29, 1977, the CITY demolished the building.

The court notes that aspects of these facts appear questionable but that on consideration of this motion for summary judgment, the court may not weigh facts. These facts shown by the CITY have not been countered by any evidence by plaintiff.

On the basis of these facts, the court concludes that the CITY has shown it exercised due diligence in attempting to find plaintiff and personally serve him with notice of the hearing. Therefore, the CITY was authorized to serve notice of the proceedings by publication. Atlanta Housing Code, §15-54, 1967; Ga. CPA §4(e)(1).

The court further finds that the CITY complied with the In Rem Proceedings requirements in Article III of the Housing Code and that the Code was authorized by the General Assembly's local amendment to Article IX, Sec. IV, Para, IV (Ga. Code Ann. §2-6104) set forth at 1974 Georgia Laws 1663. The ordinance provides that the owner has an opportunity to repair his building and therefore the city may constitutionally demolish the building without compensating the owner where the

building is a nuisance endangering health and safety. Oliver v. City of Macon, 148 Ga. App. 346 (1979).

THERFORE, the court hereby denies plaintiff's Motion for Summary Judgment and grants Summary Judgment in the CITY OF ATLANTA.

AND IT IS SO ORDERED.

This 26th day of May, 1982.

/S/
ISAAC JENRETTE
JUDGE SUPERIOR COURT
ATLANTA JUDICIAL
CIRCUIT

Copies to: Pl's Atty:
Oze R. Horton
7143 Oak Street
Jonesboro, GA 30236

Def's Atty:
David D. Blum
Marva Jones Brooks
Joe M. Harris
1100 S. Omni International
Altanta, GA 30335

IN THE SUPREME COURT OF GEORGIA

JOHN D. BROWN	)	
	(	
Appellant	)	
	(	
vs	)	CASE NO. 39682
	(	
CITY OF ATLANTA	)	
	)	

APPELLANT'S APPLICATION FOR WRIT OF CERTIORARI

This matter came to this Court via the granting of Summary Judgment to Appellee, based on Appellee's efforts, but failure, to perfect service on Appellant.

The Court of Appeals held the efforts good, and affirmed the grant.

Appellant filed his case in Fulton Superior Court, based on his Constitutional rights, guaranteed to him under Article V Sec. 1-805 and Article XIV Section 1-815 of the Constitution of the United States, and of Article 1, Section 1, Code 2-103 and Article 1, Section 111, Code 2-301, of the Constitution of the State of Georgia, which prohibited the

"taking or damaging" of private property for public purposes without just and adequate compensation being first paid, and "without due process".

His 4-unit apartment, located at 747 Kirkwood Avenue, S.E., Atlanta, Georgia, was destroyed by Appellee, by its admission, and without notice, to Appellant, under provisions of Chapter 111 of the Housing Code of the City of Atlanta, In Rem, Section 15-47 et seq. thereof, In Rem Proceeding against dwelling, building or structure unfit for Human Habitation or occupancy.

Appellee answered immunity; that the property was destroyed completely, December 29, 1977.

Appellee's counsel stated in its argument to the Court on motion for summary judgment, "Well, your honor, we're not contending that anything the deputy sheriff did (Mr. Raymond Purcell, retired, Clayton County) as far as trying to serve Mr. Brown, Sr., personally, was valid service. We're just showing the efforts we went to in trying to effectuate personal service and the efforts we went to personally going out there and trying

to effectuate personal service. The Code provision that we're relying on for service is by publication", all of which, contrary to Appellee's assumption, that they knew where Brown was, but relied on publication.

Appellee assumes that in a divorce case, where service was made by publication, that if the defendant showed up later, and showed that he was not a non-resident, that the judgment would still be valid.

He said further, they were relying on Appellee's "immunity" and did as it pleased.

Appellant Brown has been grossly deprived of his property by Appellee in violation of the Constitutional provisions cited.

Due process was a "dream", Destruction, "certain".

Not one of the methods of service set forth in the Appellee's Housing Code were complied with, nor were available.

Two methods of service are set out in Section 15-54(a) either of which could have effected good service on Brown; he would have had notice of the situation and

would have made remedy, without question. But neither method was used, no service was ever perfected on Appellant, and was never given any notice but a letter which indicated he was a "pauper" and could get some Government money to aid in destruction cost.

The evidence shows that this place visited by the deputy was the same place Appellee sent a letter, finally, to Brown, which he received and made answer.

The deputy never did make any inquiry in the neighborhood as to Brown's residency.

To this notice to Appellant, appellee stated: "It wasn't a notice, as Mr. Horton characterized it. It was a notice that he might be available to a grant to help him financially in demolition of this property".

If this method becomes practice, then many parties will never get any service, and the opinion should never be allowed in the books.

Brown answered this was his first notice about the property, He was not in any way granted a right, even at this

time, to comply with any order of Appellee to make any designated repairs.

In this condition of the case, the Superior Court granted Appellee Summary Judgment, which is being here contested.

Appellant is entitled to a complete hearing of this matter and reversal.

Appellee violated each of the Constitutional provisions cited; failed to give Brown any service, but destroyed the 4 - unit apartment house "without due process" and payment on the assumption Appellee was immune and not really required to give Appellant "any notice".

Appellant was required to abide by the terms of the In Rem proceeding; but apparently, Appellee was not but could shift as it saw fit.

Appellee has shown no necessity for destruction of Brown's 4-unit apartment house that would require police action.

Appellee showed that by the terms of its own rules as to destruction of property designated, that it must give several notices to owners and interested parties the rein. The case shows that it did not give any "but did its best" which cannot satisfy even its own Code or the Constitutional provisions designated.

In Re Chapter 111 Atlanta Housing Code furnishes no immunity to Appellee. It prescribes, how, where, when and terms of service required to owners and others at interest, and reliance on any immunity is not valid. The rules apply equally to all and to any prescribed property which may be subject to demolishment under it.

Section 15-54 (a* of the Housing code is dispositive of the question and should be espoused by the Court.

Summary Judgment to Appellee (defendant below) was error. Such should have been granted Appellant, Brown.

Copy of service provisions of the Code are provided hereto to the Court by exhibit attached. As will be seen, Section (c) does not apply in this case. WHEREFORE, Applicant Appellant prays that he be granted Certiorari directed to the Court of Appeals.

/S/
OZE' R. HORTON
Appellant's Attorney

7143 Oak Street
Jonesboro, Georgia 30236
Phone: 478-0458

I certify that I have served appellee with a copy hereof, with attachments, by mailing a copy to its attorney of record, David Blum, addressed to him at: 1100 S. Omni International, Atlanta, Ga. 30335, this ___ day of February, 1983.

/S/
Appellant's Attorney

CLERK'S OFFICE, SUPREME COURT OF GEORGIA

Atlanta March 16, 1983

Dear Sir:

Case No. 39682. Brown v. City of Atlanta

A motion for reconsideration was denied today.

Very truly yours,
MRS. JOLINE B. WILLIAMS,
Clerk